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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,255	03/16/2004	David Maxwell Cannon	SJO920030091US1	2250
45216	7590	09/26/2008		
Kunzler & McKenzie 8 EAST BROADWAY SUITE 600 SALT LAKE CITY, UT 84111			EXAMINER LIM, KRISNA	
			ART UNIT 2153	PAPER NUMBER
			MAIL DATE 09/26/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/801,255	Applicant(s) CANNON ET AL.	
	Examiner Krisna Lim	Art Unit 2153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. Claims 1-20 are presented for examination.
2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Rezvani et al. [U.S. Patent No. 6,621,827].

4. Rezvani disclosed (e.g., see Figs. 1-6) the invention substantially as claimed.

Taking claim 1 as an exemplary claim, the reference disclosed an apparatus for adaptive polling of a monitored system (e.g., 28 of Fig. 3), the apparatus comprising:

- a) a poll receiving module (e.g., 49, col. 9 (lines 30-48)) configured to receive a polling signal from a polling system;
- b) an event prediction module configured to predict when an operation-related event (e.g., "state of each connected devices", "checks for commands from server", "N-commands are waiting in the queue", "effect changes", "interval change", "heart beat interval", "events data", "network level activities", col. 9 (lines 57-68), col. 10 (lines 1-7)) of a monitored operation will occur in the monitored system;
- c) a next polling time determination module configured to determine a next polling

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time based on the prediction (e.g., “state of each connected devices”, “checks for commands from server”, “N-commands are waiting in the queue”, “effect changes”, “interval change”, “heart beat interval”, “events data”, “network level activities”, col. 9 (lines 57-68), col. 10 (lines 1-5)) of when the operation-related event will occur in the monitored system; and

d) a polling response module (e.g., see 214-218 of Fig. 6) configured to communicate the next polling time and monitored system operation information to the polling system.

Rezvani et al. disclosed the monitoring module 28 for polling (50) by scheduling a transmission between the monitoring module 28 and the server 14. Rezvani et al. further disclosed that the monitoring module 14 will poll the server 14 and retrieve data from the server 14 until there are no more commands in the queue. Moreover, Rezvani et al. further disclosed the server 14 to make an internal change to the monitor 28 or to modifying the polling 50 or heartbeat 52 time intervals. While Rezvani et al. further disclosed that the next polling time was based on the result of the determination of these events: “state of each connected devices”, “checks for commands from server”, “N-commands are waiting in the queue”, “effect changes”, “interval change”, “heart beat interval”, “events data”, “network level activities”, etc., Rezvani et al. did not explicitly mention that the next polling time was based on the prediction of when the operation-related event will occur in the monitored system. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to obviously recognize that the result of the determination of those events would have been a prediction of the events to the extent of the claim language.

5. As to claim 2, Rezvani further disclosed the next polling time determination module is further configured to determine the next polling time based on the prediction of when the operation-related event will occur based on network traffic (e.g., “network level activities”, col. 9 (lines 57-68), col. 10 (lines 1-7)).

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6. As to claim 3, Rezvani further disclosed the next polling time determination module is further configured to determine the next polling time based on the prediction of when the operation-related event will occur and if another operation is executing with a higher priority than the operation, being monitored (e.g., "state of each connected devices", "checks for commands from server", "N-commands are waiting in the queue", "effect changes", "interval change", "heart beat interval", "events data", "network level activities", col. 9 (lines 57-68), col. 10 (lines 1-7)).

7. As to claim 4, Rezvani further disclosed the monitored system retains a status of the monitored operation for a period of time after completion of the monitored operation (e.g., "state of each connected devices", "checks for commands from server", "N-commands are waiting in the queue", "effect changes", "interval change", "heart beat interval", "events data", "network level activities", col. 9 (lines 57-68), col. 10 (lines 1-7)).

8. As to claim 5, Rezvani further disclosed a polling adjustment module in the polling system configured to adjust the next polling time (e.g., "effect changes", "interval change", col. 9 (lines 57-68), col. 10 (lines 1-7)).

9. As to claim 6, Rezvani further disclosed a polling adjustment module configured to adjust the next polling time based on the presence of a user input to the polling system (e.g., "state of each connected devices", col. 9 (lines 57-68), col. 10 (lines 1-7)).

10. As to claim 7, Rezvani further disclosed the polling system is a client system (12), and the poll receiving module, event prediction module, next polling time determination module and polling response module are on a server (e.g., see Figs. 2, 5).

11. As to claim 8, Rezvani further disclosed n the polling system is a client system (12), and the poll receiving module, event prediction module, next polling time

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determination module and polling response module are on a data storage system (e.g., see Figs. 2, 5).

12. Claims 9-20 are similar in scope as of claims 1-8, and therefore claims 9-20 are rejected for the same reasons set forth above for claims 1-8.

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The references are cited in the Form PTO-892 for the applicant's review.

A shortened statutory period for response to this action is set to expire 3 (three) months and 0 (zero) days from the mail date of this letter. Failure to respond within the period for response will result in **ABANDONMENT** of the application (see 35 U.S.C 133, M.P.E.P 710.02, 710.02(b)).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisna Lim whose telephone number is 571-272-3956. The examiner can normally be reached on Monday to Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess, can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KI

September

/Krisna Lim/

Primary Examiner, Art Unit 215312, 2008